

SUBJECT: Release of Documents from Federal Employees' Compensation (FECA) Files

This circular is intended to provide guidance in situations where information or copies of information are requested from a claimant's FECA case file. While such requests may come from the claimant or his/her authorized representative, the Department of Labor or employing agency Office of Inspector General, claimant's former spouse or other entity, this circular focuses primarily on what information may be requested by the employing agency and when it may be provided. Because FECA case files are governed by the Privacy Act of 1974 and because FECA case file documents contain Personally Identifiable Information (PII), great care must be taken in handling requests for information. The extent to which information may be released out of a FECA case file is governed by the Privacy Act. Descriptions of the agency's role in the claims process are set forth in the FECA statute, its implementing regulations, and guidance such as the program Procedure Manuals and the Agency Handbook, CA-810. While the agency is not a party to the claim, the agency plays a critical role in the FECA process, particularly in return to work; it may request and receive documentation, including medical reports, to fulfill its role in the claims process.

Background:

All records relating to claims for FECA benefits are covered by the government-wide Privacy Act system of records entitled DOL/GOVT-1. Information from the FECA file may only be released pursuant to a need to know within DOL, a published routine use, a signed Privacy Act waiver, or a court order from a court of competent jurisdiction. Release of information in accordance with a routine use must be consistent with the purpose for which the file was created, which is the administration of the FECA case.

The FECA regulations at 20 C.F.R. § 10.11 make clear that the protection, release, inspection and copying of records covered by DOL/GOVT-1 should be carried out in accordance with the rules, guidelines and provisions of Subpart A of the FECA regulations, as well as those contained in 29 C.F.R. parts 70 and 71, which are the Department's regulations implementing the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a) respectively, as well as with the notice of system of records and routine uses published in the Federal Register. The Office of Workers' Compensation Programs (OWCP) has determined that records covered by DOL/GOVT-1 may not be used in connection with a personnel action absent consent of the subject of the record. It is not permissible to use or release FECA documents in connection with personnel matters unless they have first obtained the claimant's written consent. Any questions an agency has concerning the disclosure of FECA-related documents or uses of such documents by the agency should be referred to the OWCP for resolution. 63 Federal Register 56752, 56753 (October 22, 1998).

A "routine use" authorizes disclosing information from the FECA claim file without first obtaining the claimant's permission—such disclosure is acceptable because the routine use is listed and published in the Privacy Act Systems Notice for DOL/GOVT-1, and because OWCP has concluded that the anticipated use of the document is consistent with the purpose for which the information was collected. These routine uses include: sending the record to medical providers asked by OWCP to examine or treat the claimant; providing relevant information about the nature and mechanism of the injury or illness to health and safety officials within the employing agency; providing relevant documents to nurses and rehabilitation counselors assigned by OWCP to work on the case; providing documents to employing agency personnel (but only for purposes related to the claim, and not for other reasons such as personnel actions); providing documents pertaining to the factual circumstances of the case to credit bureaus; and others. A listing of the universal routine uses which apply to all Department of Labor (DOL) system of records can be found at <http://www.dol.gov/sol/privacy/intro.htm>. A listing of the routine uses specific to DOL/GOVT-1 can be found at <http://www.dol.gov/sol/privacy/dol-govt-1.htm>. [See DOL Privacy Act System of Record Notices, 67 FR 16825, at 16827-16828 (April 8, 2002).] Routine use b for DOL/GOVT-1 authorizes release of case file information "To federal agencies that employed the claimant at the time of the occurrence or recurrence of the injury or occupational illness in order to verify billing, to assist in administering the FECA, to answer questions about the status of the claim, to consider rehire, retention or other actions the agency may be required to take with regard to the claim or to permit the agency to evaluate its safety and health program."

Handling requests:

1. Regarding general requests from employing agencies, OWCP's Division of Federal Employees' Compensation (DFEC) may grant requests from agencies for records pertaining to their employees. If records are to be released, Claims Examiners (CEs) should ensure that the requestor is agency-authorized, and should require proper identification before releasing only that information directly relevant to the request. For example, if an agency needs to formulate a job offer and needs to know a claimant's medical restrictions, relevant medical reports may be released. Blanket release of the entire case record is not appropriate, except to an investigative body (DOL Office of Inspector General (OIG) or Employing Agency OIG), or to an Agency Injury Compensation Specialist who must understand that indiscriminate or widespread further release of the FECA record within the employing agency is not authorized or permitted by OWCP/DFEC.²
2. Employing agency personnel who inquire about releasing claims-related material from their files should be referred to 20 C.F.R. 10.10-10.13, as well as paragraph 9-2 of Injury Compensation for Federal Employees (Publication CA-810).
3. An agency representative may ask to inspect files at the district office. OWCP will accommodate all such requests subject to logistical and physical limitations, including reasonable advance notice of the visit and a list of cases to be reviewed. Once the agency representative has presented satisfactory identification, requested documents from the FECA claim file may be released. However, the agency representative must provide a separate statement regarding the reason for any requested documents for each FECA claim for which copies of documents are requested. Release of complete case records to employing agencies will occur very infrequently and the employing agency must establish a reasonable need for such a request.
4. Release of documents within the FECA case record to employing agencies is a permitted

routine use. However, the Office may decline to release information not pertinent to the investigation or audit or may request the agency to provide additional rationale for requesting the information.

5. While documents within the FECA case record may be released to employing agencies, the use of these copies **must** be consistent with the reason the information was collected. In practice, this means that the use must be connected in some way with the compensation claim. Absent truly unusual circumstances (such as a FECA claimant's improper actions in the FECA claim forming the basis of a disciplinary action and with explicit DOL permission), agencies may not use copies of information from claim files in connection with EEO complaints, disciplinary actions or other administrative actions without the employee's consent.

6. A request for copies of documents contained in the FECA case record received from an employing agency must contain a reason for the request. If the reason stated is consistent with the purpose for which the information was collected, such copy requests will generally be honored. The CE is not required to determine whether the evidence of record indicates the claimant is currently capable of returning to work before providing the employing agency injury compensation specialist (or an individual performing those duties) with current medical reports for the stated purpose of attempting re-employment of the injured worker.

7. Whether in writing or in person, the agency representative may make a copy request using a standard request form attached to this Circular, or may use any signed statement which includes the required information. All such copy requests will be included in the FECA case record.

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Director for
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Distribution: List No. 2—Folioviews Groups A, B, and D (Claims Examiners, All Supervisors, District Medical Advisors, Technical Assistants, Rehabilitation Specialists, Staff Nurses and Fiscal Personnel)

Attachement 09-05

EMPLOYING AGENCY REQUEST FOR COPIES OF DOCUMENTS FROM FECA CASE RECORDS (place in case file)

Claim Number: _____

Claimant Name: _____

As an authorized representative of _____ I am requesting a copy of the following documents from the above noted FECA claim record:

These copies are being requested for the following reason(s):

I understand that the use of these document copies must be consistent with the reason for which they were collected and may not be used in connection with personnel actions without the employee's consent.

Signature: _____

Date: _____